

January 26, 2012

Dear Honorable Tory Rocca, Chairman of the Senate Committee on Regulatory Reform,

My name is Mark Fleet; I have a BA degree in Business, and have ten (10) years' experience working as a tradesperson (journeyman carpenter, concrete finisher, certified welder). For the last 24 years I have worked for five (5) local jurisdictions as a Building Inspector, Plans Examiner, and Building Official. I am currently the Building Official for a city in our State. I am against changing PA 230. The proposed changes do not improve but rather put in question:

- Fiscal Accountability of Private Inspections Firms and Governing Officials
- Business Ethics of receiving permit fees and adapting enforcement principles
- Public Trust for the common good

### **Why privatize? Local jurisdictions can enforce the code or defer to the State.**

I am against changing PA 230. I believe the original intent of the law was to allow local jurisdictions the option to administer and enforce construction codes with the option of sharing this task with other jurisdictions per PA 230 Sec. 8a (2) "Governmental subdivisions may provide by agreement for joint enforcement of the code." If jurisdictions do not want to enforce the code they can defer this responsibility back to the State.

### **Enforcement of codes is an active not passive process.**

PA 230 as originally written and enforced throughout our State since 1972 has proven to be an effective and efficient law safeguarding the life safety and long range interests of the public good. As Building Official, it is my responsibility to enforce the codes. Enforcement is not a passive process; it is an active process; of which the enforcement of codes may run contrary to popular opinion. Enforcement actions can incur additional costs to the owner in order to improve a structure to the minimum code requirements; whereas a passive process inputs little or no code mandate. As a public servant I work at providing exceptional customer service to my customers, but the question I keep in mind, "Who is my customer?" Is the contractor my customer, is the designer my customer, and is the current owner my customer? Yes, these are my current customers temporarily, for ownerships change. The customers we serve are not only the current participants of the construction project and its owner, but also include future owners and occupants who use the building throughout the expected lifespan of the building. That's who our customers are.

### **Privatization of policing powers is reminiscent of nepotism.**

Privatization of construction code administration and inspections has had a negative influence on regional enforcement efforts and allows governing officials to leverage undue influence on the enforcing agency. If one jurisdiction make a conscientious effort to enforce the code and a neighboring jurisdiction does not, the heavier burden of enforcement for the falls on the jurisdiction that is "doing" the work. Passive enforcement practices de-value diligent construction code enforcement. Enforcement of construction codes is like a double edged sword, if you don't do your job contractors and owners enjoy the short term benefit of no enforcement; if you do your job, it's very likely you will upset some folks. Private inspections firms regulated by a contract maintain its business plan by retaining their contract; this is accomplished by not upsetting the apple cart – doing exactly what the governing officials think is the best for the jurisdiction. Privatization of code enforcement works best for local officials, the private inspections contractor only enforce the codes at the expected level of the governing officials. Work in the public sector is different. Although we work diligently to collaborate with the owner and contractor to

find creative code solutions and ferret out every code exception possible, sometimes there is no easy solution and decisions must be made that run contrary to the expectations of governing officials. This is where the construction code of appeals process begins. Public inspections employees work for long range gains on behalf of the common good not for short term gains of special interests. Privatization of these policing powers and changing the definition of 'Building Official' equates to hiring a fox to watch the henhouse.

**Are we in business to safeguard the common good or make a profit?**

The act provides the necessary language to provide adequate funding for code enforcement. Private firms usually contract for 70 – 80% of the permit revenues and the jurisdiction retains the rest. By privatizing, local jurisdictions retain the balance of permit fees and allocate this to 'other' purposes. Who audits the private firms for permit fee allocation? Is a private firm entitled to make a profit? If so, how much is reasonable, if not, why are they in business? Private firms are in business to make a profit, appease governing officials, and not protect the common good; whereas public employees are in business to protect the common good of the public.

**Future public assurance, how much insurance can a private inspections firm carry to safeguard their liability?**

Public employees are covered by the jurisdiction for errors and omissions and government immunity, but it is my understanding that private inspections firms are not included in government immunity. How much insurance can a private inspections firm carry, and how long is it good for? Is the jurisdiction culpable for damages incurred by a private inspections firm that fail to do their due diligence? If a problem occurs for a lack of enforcement and the private firm lacks insurance coverage, what is the citizen to do when there is a problem? Where is the protection of the common good? Privatization of these policing powers abandons the interests of the common good for a short term gain.

**Support accountable and responsible code enforcement.**

Enforcement of Construction Codes is a policing function that involves enforcement of site specific code requirements that affect the life safety of that structure and over time affects the overall quality of life for the entire community. It affects micro and macro aspects of life safety in the built environment. I ask for your support and vote of confidence to prohibit privatization of these policing powers and require local jurisdictions to participate in regional inspections services as provided in the act per PA 230 Sec. 8a (2) "Governmental subdivisions may provide by agreement for joint enforcement of the code."

I thank you for your consideration of these important matters. If I can be of assistance or help in any way, please contact me.

Respectfully and sincerely,



Mark Fleet  
404 Lincoln Lake  
Lowell, MI 49331-1357  
e-mail: markofleet@hotmailcom  
616-822-6594

John 10: 11-13, "I am the good shepherd. The good shepherd lays down his life for the sheep. The hired hand is not the shepherd and does not own the sheep. So when he sees the wolf coming, he abandons the sheep and runs away. Then the wolf attacks the flock and scatters it. The man runs away because he is a hired hand and cares nothing for the sheep." NIV Copyright © 1973, 1978, 1984, 2011 by Biblica